

**PUBLIC LAW BOARD NO. 7163**

AWARD NO. 35

CASE NO. 35

Carrier File: 12(06-0764)

BMWE File: D21204906

**PARTIES TO  
THE DISPUTE:**

Brotherhood of Maintenance of Way Employees  
Division - IBT Rail Conference  
vs.  
CSX Transportation, Inc.

**ARBITRATOR:** Gerald E. Wallin

**DECISION:** Claim sustained.

**STATEMENT OF CLAIM:**

- “1. The Carrier violated the Agreement when it improperly compensated the members of SPG Gang 5XT9 for work they performed on July 12 and 13, 2006 [System File D21204906/12(06-0764) CSX].
2. As a consequence of the violation referred to in Part (1) above, the Claimants\* listed below shall now each be compensated for ‘... thirty (30) minutes overtime for missed lunch period, one hour and forty minutes (1:40) overtime for travel and ten (10) overtime hours for Thursday, July 13, 2006 instead of ten (10) straight time pay, at their respective rate of pay, account of the aforementioned rules violations as well as this loss of work opportunity.’

\*R. Dunfee, J. Stephens, F. Sammons, D. Lunsford, R. Shaffer, D. Gill, Jr., K. Akers, R. Hartzell, J. Richardson, G. Bond, R. Salyers, J. Hooten, A. Bland, L. Phillips, R. Whitely, R. W. Howard, P. Miller, D. Bozsik, R. Jones, M. Powell, W. Whipple, N. Howard, S. Cooper, E. Free, J. Thomas, R. A. Howard, E. Shepherd, R. Carter, R. Leach, D. Billings, W. Hoover, D. Shepherd, J. Lowery, D. Feters, F. Moreland, K. Ward, C. Freeman, J. Osborne, R. Wilson, J. Gaylor, D. Herman, II, C. Roberson, T. Gillespie, D. Dorsett, J. Morrow, G. Siefer, T. Staser and J. Brown.”

**FINDINGS OF THE BOARD:**

The Board, upon the whole record and on the evidence, finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by agreement of the parties; that the Board has jurisdiction over the dispute, and that the parties were given due notice of the hearing.

The instant dispute is a claim for additional compensation arising out of the events of an extended workday on July 12, 2006 and the impact of that workday on the rate of pay to be applied for the ensuing workday, July 13, 2006.

Our review of the record does not reveal any procedural irregularities that require our attention. Although a time limit violation was alleged by the Organization during the handling of the claim on the property, the Organization did not take exception to the Carrier's explanation about the proper operation of the time limit provision in question. Moreover, the Organization's submission did not advance any such procedural contention to us for disposition.

On the merits, we must find that the Carrier's position ignores well settled principles of railroad arbitration precedent. The Carrier's defense is solely that the Organization's claim is insufficient because it rests only upon assertions without supporting evidence. In this regard, the Carrier's position is wrong.

The Organization's initial claim dated August 14, 2006 consists of three pages. The claim lists, in great detail, both the timing and the sequence of events performed by SPG Gang 5XT9 on July 12, 2006. It shows the gang's starting time, what they did throughout the day and the times in which they did what they did. It asserts that they were not afforded meal periods within the time parameters required by the applicable Agreement provisions. The claim also describes the approximately 50 mile change of location made at the end of the day, the gang's arrival time at the new overnight location, and the failure of the Carrier to provide a meal upon arrival at the new location. The claim describes how the members of the gang had to wait for the arrival of food. Finally, the claim stated the time in which their clock time stopped for the day as well as the fact that they were afforded less than an 8-hour rest interval before having to report for work at 7:00 a.m. the following day. The Carrier did not refute any of the details asserted in the claim. The claim also listed the text of applicable rules allegedly violated by the Carrier. The Carrier did not take exception to the accuracy of the rule language contained in the claim.

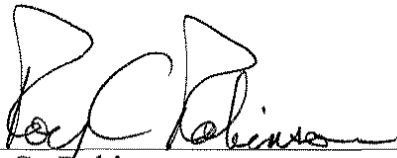
It has been well settled in railroad arbitration, for decades, that when assertions of material fact are not refuted, they become accepted as proven fact for purposes of analysis of the record. Therefore, such unrefuted assertions do not require any supporting evidence; they stand as proven by the lack of any effective challenge to them. On the record before us, therefore, and without more, the Organizations's assertions that were unrefuted by the Carrier establish all of the requisite factual detail necessary to determine the merits of the claim.

But there is more. Despite not having an obligation to provide any evidence, the Organization nevertheless did so. In response to the Carrier's general denial, the Organization supplied the statement of Claimant Hartzell, who was a member of the gang and whose statement contained all of the detail that had been included in the Organization's original claim. The Carrier did not take exception to any of the contents of Hartzell's statement.


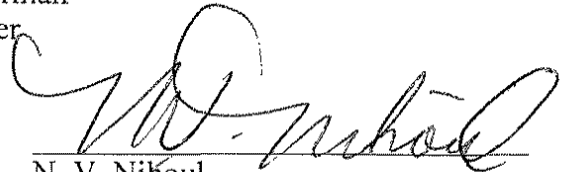
Given the foregoing discussion, we must find that the Organization essentially established the validity of its claim twice. The facts thus established show, without question, that the Carrier failed to pay the gang as it should have been paid. The gang is entitled to the pay claimed for missed meal periods, for the extended travel time they incurred, and for the lack of a rest period of at least eight hours before having to report for work on July 13, 2006. Accordingly, the claim must be paid as stated.

**AWARD:**

The Claim is sustained. The Carrier is directed to comply with this award within thirty (30) days of the date shown below.



R. C. Robinson,  
Organization Member

  
Gerald E. Wallin, Chairman  
and Neutral Member

N. V. Nihoul,  
Carrier Member

Date: Feb. 11, 2009